IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SUSAN C. LIEBMAN	:	
959 LEOPARD ROAD	:	
RYDAL, PA 19046	:	**CIVIL ACTION**
	:	
VS.	:	
	:	
NISSAN NORTH AMERICA, INC.	:	**NO.:**
C/O CORPORATION SERVICE COMPANY	:	
2595 INTERSTATE DRIVE, SUITE 103	:	
HARRISBURG, PA 17110	:	
and	:	
R & D MOTORS, INC. d/b/a	:	
INFINITI OF WILLOW GROVE	:	
1510 EASTON ROAD	:	
WILLOW GROVE, PA 19090	:	

CIVIL ACTION

1. Plaintiff, Susan C. Liebman, is an adult individual who resides at 959 Leopard Road, Rydal, PA 19046.

2. Defendant, Nissan North America, Inc., (hereinafter referred to as "Nissan") is a foreign business corporation, licensed to do business in Pennsylvania.

3. Defendant, R & D Motors, Inc., d/b/a Infiniti of Willow Grove (hereinafter referred to as "Infiniti"), is a Pennsylvania corporation whose principal place of business is located at 1510 Easton Road, also known as 2620 Wyandotte Road, also known as Route 611 and Wyandotte Roads, Willow Grove, PA 19090.

4. Jurisdiction is premised on the diversity of citizenship and on the federal question. 28 U.S.C. §1331, 1332(a).

   Supplemental jurisdiction exists over the state law claims. 28 U.S.C. §1367.

5. Venue is proper in this district as the plaintiff is a resident of this district, and Defendants are deemed residents of this district. 28 U.S.C. §1391 (b), (c).

6. On or about October 25, 2013, Plaintiff purchased a new 2014 Infiniti Q50H AWD, from Infiniti of Willow Grove, an authorized Infiniti dealership, and manufactured and warranted by Infiniti Division of Defendant Nissan North America, Inc., bearing the Vehicle Identification Number JN1AV7AR2EM70065.

7. The contract price of the vehicle, including registration charges, document fees, sales tax, finance and bank charges, totaled $45,595.40 A true and correct copy of the Buyer's Order and Retail Installment Sales Contract is attached hereto, made a part thereof, and marked Exhibit "A".

8. At the time of sale, the vehicle was advertised as getting 28/35 miles per gallon, city/highway, with the intention of potential buyers relying upon that representation. See Exhibit "B."

9. In consideration for the payment of said vehicle, Defendants issued to Plaintiff several warranties, guarantees, affirmations or undertakings with respect to the materials and/or workmanship of the vehicle and/or remedial action in the event the vehicle fails to meet the promised specifications.

10. The above-referenced warranties, guarantees, affirmations or undertakings are/were part of the basis of the bargain between Defendant and Plaintiff.

11. The parties' bargain included an express 4 year/60,000 mile basic limited warranty; 6 year/70,000 mile powertrain warranty; complimentary service loan car; and various guarantees, affirmations and undertakings as stated in Defendants' warranty materials and owner's manual. A true and correct copy of the MSRP sticker is attached hereto, made a part hereof, and marked as Exhibit "B." The full warranty can be found on the Infiniti website at:

https://owners.infinitiusa.com/content/manualsandguides/common/2014/2014-infiniti-hybrid-warranty-booklet.pdf

12. Between October 25, 2013 and October 25, 2015, the vehicle was brought back to Infiniti of Willow Grove multiple times for service and recall notices.

13. In November 2015, the vehicle would shake and vibrate. Plaintiff and/or her husband, Samuel Liebman, brought the vehicle to Infiniti of Willow Grove for service. Infiniti of Willow Grove serviced the brakes, which did not stop the shaking and vibrating.

14. Plaintiff and/or Samuel Liebman returned again (second time) for the shaking and vibrating, and Infiniti of Willow Grove serviced the vehicle, but, again, did not stop the shaking and vibrating.

15. Plaintiff and/or Sam Liebman returned again (third time) for the shaking and vibrating, and Infiniti fo Willow Grave replaced the large hybrid battery, which still did not stop the shaking and vibrating.

16. Plaintiff and/or Sam Liebman returned again (fourth time) to Infiniti of Willow Grove, on December 17, 2015, for the shaking and vibrating. This time, Infiniti of Willow Grove determined the problem was the transmission. The car remained at Infiniti of Willow Grove for service through January 18, 2016 to replace the transmission.

17. After the car was returned to Plaintiff, Plaintiff and/or Samuel Liebman noticed that the wheels wobbled violently when turning. The vehicle was brought back to Infiniti of Willow Grove on January 21, 2016, and Infiniti of Willow Grove calibrated the steering angle sensor.

18. Thereafter, the vehicle was towed to Infiniti of Willow Grove because of a dead battery. The problem which caused the battery to die could not be duplicated. This happened on

three (3) separate occasions. Prior to the battery dying, the electronic system would state that "key not detected."

19. On three (3) other occasions, the battery died, and Infiniti of Willow Grove could not correctly diagnose and/or repair the problem. Repairs included, among other things, replacing the key fob battery.

20. On Monday, May 16, 2016, the vehicle was brought to Infiniti of Willow Grove (7th time) with a dead battery. On Friday, May 20, 2016, Infiniti believed the problem had been repaired, but requested to keep the car over the weekend to be certain. On Monday, May 23, 2016, Infiniti of Willow Grove advised Plaintiff and/or Samuel Liebman that the battery died again over the weekend, and they believed the problem was that the vehicle needed a new 12 volt battery.

21. The vehicle was returned to Plaintiff in June 2016. At that time, the battery appeared to be working, but Plaintiff has not taken the car for long rides out of concern that the battery would die again or the vehicle would malfunction.

22. Prior to the May/June 2016 battery replacement, the vehicle averaged about 28 miles per gallon, as advertised.

23 Following the May/June 2016 battery replacement, the vehicle only averages about 18 miles per gallon.

24. As a result of the ineffective repair attempts and /or failure to repair made by Defendant, by and through its authorized dealer, Infiniti of Willow Grove, the vehicle is rendered substantially impaired, unable to be utilized for its intended purposes, and is worthless to Plaintiff.

25. Plaintiff has resorted to Defendants' informal dispute settlement procedure, to the extent said procedure complies with 16 CFR 703.

26. Plaintiff avers that the Federal Trade Commission (FTC) has determined that no automobile manufacturer complies with 16 CFR 703. See, Fed. Reg. 15636, Vol. 62, No. 63 (Apr. 2, 1997). However, Plaintiff has complied with the BBB arbitration, as requested by Defendant, Nissan North America.

27. Within the warranty period, Plaintiff complained on at least twelve (12) separate occasions about defects and or non-conformities. True and correct copies of some of the repair invoices are attached as Exhibit "C".

28. It is believed, and therefore averred, that Infiniti of Willow Grove did not keep records of every repair attempt on the subject vehicle.

29. Plaintiff avers that such itemized repair invoices also include technicians' notes of diagnostic procedures and repairs, and Defendants' Technical Service Bulletins relating to this vehicle; however, such notes and bulletins were not provided to Plaintiff, as well as repair records which Defendant Infiniti of Willow Grove failed to keep.

30. Plaintiff has, and will continue to suffer, damages due to Defendants' failure to maintain and provide full statements of repair.

COUNT I
MAGNUSON-MOSS (FTC) WARRANTY IMPROVEMENT ACT
LIEBMAN v. NISSAN

31. Plaintiff incorporates paragraphs 1-30 above, as though fully set forth at length herein.

32. Plaintiffs is a "Consumer" as defined by 15 U.S.C. §2301(3).

33. Defendant is a "Suppliers," "Warrantors," and/or "Service Contractors" as defined by 15 U.S.C. §2301(4), (5) and (8).

34. The subject vehicle is a "consumer product" as defined by 15 U.S.C. §2301(1).

35. By the terms of its written warranties, affirmations, promises, or service contract, Defendants agreed to perform effective repairs at no charge for parts and/or labor.

36. The Magnuson-Moss Warranty Improvement Act requires Defendants to be bound by all warranties implied by state law. Said warranties are imposed on all transactions in the state in which the vehicle was delivered.

37. Defendant, through its authorized agents, have made attempts on several occasions to comply with the terms of its express warranties; however, such repair attempts and/or failure to repair have been ineffective.

38. The Magnuson-Moss Warranty Improvement Act, 15 U.S.C. §2310(d)(2) provides: If a consumer finally prevails on an action brought under paragraph (1) of this subsection, he may be allowed by the court to recover as part of the judgment a sum equal to the amount of aggregate amount of costs and expenses (including attorney fees based upon actual time expended), determined by the court to have been reasonably incurred by the Plaintiff for, or in connection with the commencement and prosecution of such action, unless the court, in its discretion shall determine that such an award of attorney's fees would be inappropriate.

39. Plaintiff has afforded Defendants a reasonable number of opportunities to conform the vehicle to the aforementioned express warranties, implied warranties and contracts.

40. As a direct and proximate result of Defendants' failure to comply with the express written warranties, Plaintiff has suffered damages and, in accordance with 15 U.S.C. §2310(d)(1), Plaintiff is entitled to bring suit for such damages and other legal and equitable relief.

41. Defendant's failure is a breach of Defendant's contractual and statutory obligations constituting a violation fo the Magnuson-Moss Warranty Improvement Act, including, but not limited to a breach of express warranties, breach of implied warranty of merchantability, breach of implied warranty of fitness for a particular purpose, breach of contract, and constitutes an Unfair Trade Practice.

42. Plaintiff avers it complied with Defendants' Dispute Resolution Program in compliance with 16 CFR 703 by the FTC.

43. Plaintiff avers that upon successfully prevailing upon the Magnuson-Moss claim herein, all attorney fees are recoverable and are demanded against Defendants.

WHEREFORE, Plaintiff respectfully demands judgment against Defendants in an amount equal to the price of the subject vehicle, plus all collateral charges, incidental and consequential damages, reasonable attorneys' fees, and all court costs.

COUNT II
BREACH OF WARRANTY - EXPRESS AND IMPLIED
LIEBMAN v. NISSAN

44. Plaintiff incorporates paragraphs 1- 43 above, as though fully set forth at length herein.

45. 13 Pa. C.S.A. §2313 provides that an express warranty is created by a promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain, creating an express warranty that the goods shall conform to the promise.

46. 13 Pa. C.S.A. §2314 provides that an implied warranty of merchantability exists, and that the goods will be fit for the ordinary purpose for which is it used, and will conform to the promises of fact made on the label.

47. 13 Pa. C.S.A. §2315 provides that a good will be fit for the particular purpose for which the goods are required.

48. Defendant breached those warranties, as the vehicle did not perform as intended; the vehicle frequently did not run at all: Defendants have not been able to repair the vehicle properly despite numerous attempts; and, now, after repeated attempts at repair, the vehicle does not get the miles per gallon as promised on the label.

WHEREFORE, Plaintiff respectfully demands judgment against Defendant in an amount equal to the price of the subject vehicle, rescission, collateral charges, incidental and consequential damages, and all court costs.

COUNT III
PENNSYLVANIA AUTOMOBILE LEMON LAW
LIEBMAN V. NISSAN

49. Plaintiff incorporates paragraphs 1-48 above, as though fully set forth at length herein.

50. Plaintiff is a purchaser as defined by 73 P.S. §1952.

51. Defendant Infiniti of Willow Grove, is a dealer as defined by 73 P.S. §1952.

52. Defendant Nissan is a manufacturer as defined by 73 P.S. §1952.

53. Defendants had an obligation to repair or correct, at no cost to Plaintiff, a nonconformity which substantially impairs the use, value or safely of said motor vehicle which may occur within a period of one year following the actual delivery of the vehicle to the purchaser. 73 P.S. §1954 (a).

54. Plaintiff delivered the nonconforming vehicle to the manufacturer's authorized service and repair facility, namely Infiniti of Willow Grove. 73 P.S. §1954 (b).

55. The manufacturer, defendant Nissan, and or its authorized dealer, Infiniti of Willow Grove, failed to repair or correct the nonconformity after a reasonable number of attempts including, but not limited to, the following months/dates: November 2015, December 2015, January 2016, May 2016, and June 2016. 73 P.S. §1955-1956(1).

56. Plaintiff was not always provided a loaner vehicle while her vehicle was at the authorized repair facility for service.

57. Plaintiff is entitled to bring a civil action as a result of loss due to nonconformity of his vehicle as a result of the manufacturer's failure to comply with the Automobile Lemon Law. 73 P.S. §1958.

58. As a result of Defendants violating the Automobile Lemon Law, Defendants have also violated the Pennsylvania Unfair Trade Practices and Consumer Protection Law. 73 P.S. §1961.

59. Plaintiff is entitled to recover, in addition to actual damages, reasonable attorneys' fees and all court costs. 73 P.S. §1958.

WHEREFORE, Plaintiff respectfully demands judgment against Defendants in an amount equal to the price of the subject vehicle, plus all collateral charges, incidental and consequential damages, reasonable attorneys' fees, and all court costs.

COUNT IV
PENNSYLVANIA UNFAIR TRADE PRACTICES
AND CONSUMER PROTECTION LAW
LIEBMAN v. NISSAN and INFINITI

60. Plaintiff incorporates paragraphs 1- 59 above, as though fully set forth at length herein.

61. Plaintiff is a person as defined by 73 P.S. §201-2(2).

62. Defendants are persons as defined by 73 P.S. §201-2(2).

63. Section 201-9.2(a) of the Act authorizes a private cause of action for any person "who purchases or leases goods or services primarily for personal, family or household purposes."

64. Section 1961 of the Pennsylvania Automobile Lemon Law provides that a violation of its provisions shall automatically constitute a violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Act, 73 P.S. 201-1 et seq.

65. In addition, the Pennsylvania Unfair Trade Practices and Consumer Protection Act, 73 P.S. §201-2(4) defines "unfair or deceptive acts or practices" to include the following conduct:

(v). Representing that goods or services have ... characteristics, ... benefits ... that they do not have...
(vii). Representing that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model, if they are of another;
(xiv). Failing to comply with the terms of any written guarantee or warranty given to the buyer at, prior to, or after a contract for the purchase of goods or services is made;
(xv). Knowingly misrepresenting that services, replacements or repairs are needed if they are not needed;
(xvi). Making repairs... tangible, real or personal property, of a nature or quality inferior to or below the standard of that agreed to in writing;
(xxi). Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding.

66. Plaintiff avers Defendants have violated these, as well as other provisions, of 73 P.S. §201-2 et seq.

67. Defendants' conduct surrounding the sale and servicing of the subject vehicle falls within the aforementioned definitions of "unfair or deceptive acts of practices."

68. The Act also authorized the Court, in its discretion, to award treble damages and attorneys' fees. 73 P.S. §201-9.2.

69. Defendants were aware, at the time of the sale, that there was a problem with the subject vehicle.

70. Defendants advised Plaintiff, at the time of the sale, that any problem with the vehicle would be repaired.

71. Plaintiff relied on these representations of the Defendants when purchasing the subject vehicle.

72. Defendants knew, or should have known, that the problem with the vehicle could not be repaired or, in the alternative, that Defendants could not repair the vehicle.

73. Plaintiff has sustained damage by purchasing a defective motor vehicle which cannot and/or has not been repaired by Defendants.

WHEREFORE, Plaintiff respectfully demands judgment against Defendants in an amount equal to the price of the subject vehicle, plus all collateral charges, incidental and consequential damages, treble damages, reasonable attorneys' fees, and all court costs.

COUNT V
VIOLATION OF THE PENNSYLVANIA UTPA-CPL
AUTOMOTIVE INDUSTRY TRADE PRACTICES
LIEBMAN v. INFINITI OF WILLOW GROVE

74. Plaintiff incorporates paragraphs 1 - 73 above, as though fully set forth at length herein.

75. Defendant, Infiniti of Willow Grove, is a repair shop as defined by Pa. Code Chapter 301, Section 301.1 et seq.

76. The Automotive Industry Trade Practices, Pa. Code Chapter 301, et seq, is part of the Pennsylvania Unfair Trade Practices and Consumer Protection Law.

77. Pa. Code 301.5 states that:

With regard to a repair shop, the following is considered unfair methods of competition and unfair or deceptive acts or practices:

(2) Failing to record in writing and to provide a copy of the record to the customer, where possible, prior to commencing repairs on the vehicle of a customer:

(i) The name and address of the customer and a telephone number, if any, at which the customer can be reached.

(ii) The date and approximate time the vehicle of the customer was delivered for repairs.
(iii) The year, make and registration number of the vehicle of the customer.
(iv) The odometer reading on the vehicle of the customer.
(v) The specific repairs requested by the customer or, if there is no specific request, a brief description of the problems encountered by the customer with the vehicle.

(5) Failing to maintain the following written record when oral authorization is received for certain repairs:
(i) The date and time authorization is received.
(ii) The identity of the employe receiving the oral authorization and the name of the person making the authorization.
(iii) A description of the exact authorization received.
(iv) If authorization is received over the telephone and the shop placed the call, the telephone number called.

(8) Failing to provide a customer at the completion of repair or maintenance work, including warranty repair work, performed on the vehicle of the customer a dated, written invoice containing the following information:
(i) The name and address of the customer and repair shop.
(ii) The date the vehicle of the customer was delivered for service.
(iii) The year, make and registration number of the vehicle of the customer and the odometer reading of the vehicle at the time the repairs were completed.
(iv) An itemized list of the specific repair or maintenance services performed on the motor vehicle of the customer.
(v) A list of the parts supplied by name or number, the price charged for the parts and the total amount charged the customer for the parts.
(vi) If a part supplied was not new, a statement that the part was either used, reconditioned or rebuilt.
(vii) The labor charge for the repair work, setting forth the number of hours, the price charged for each hour and the total amount charged the customer for labor.
(viii) The total amount charged to the customer for parts and labor; provided, however, that the price information required by this subparagraph and subparagraphs (v) and (vii) need not be provided if the price charged to the customer for the repair or maintenance work is a single charge for the particular service which charge was included in a schedule of charges posted in a clear and conspicuous manner on the premises of the repair shop or otherwise disclosed to the customer at the time the vehicle was delivered for service or repair. No other charges are permitted by this paragraph unless they are clearly and conspicuously disclosed to the customer prior to the commencement of repairs.

78. Plaintiff avers Defendant, Infiniti of Willow Grove, failed to comply with Pa. Code 301.5, as they did not maintain all of the records for all of the Liebman complaints and

repair work completed at their premises, nor did they provide such records to Plaintiff or her husband.

79. The UTPA-CPL also authorizes the Court, in its discretion, to award treble damages and attorneys' fees. 73 P.S. §201-9.2.

WHEREFORE, Plaintiff respectfully demands judgment against Defendants in an amount equal to the price of the subject vehicle, plus all collateral charges, incidental and consequential damages, treble damages, reasonable attorneys' fees, and all court costs.

COUNT VI
FRAUDULENT MISREPRESENTATION
LIEBMAN v. NISSAN & INFINITI

80. Plaintiff incorporates paragraphs 1- 79 above, as though fully set forth at length herein.

81. At the time of sale, the vehicle was advertised as getting 28/35 miles per gallon, city/highway, with the intention of potential buyers relying upon that representation. See Exhibit "B."

82. Plaintiff relied upon the advertised MPG to purchase the hybrid vehicle.

83. The vehicle now only averages about 18 miles per gallon based upon the most recent "repair" of the vehicle in June 2016.

84. Defendant knew, or was recklessly indifferent to the fact that the vehicle would not continue to get 28/35 MPG after required repairs.

85. Plaintiff has sustained damages by having a vehicle that does not run, or runs with a much lower MPG.

86. Plaintiff is entitled to punitive damages as a result of Defendant's knowing or reckless advertised representation.

WHEREFORE, Plaintiff respectfully demands judgment against Defendants in an amount equal to the price of the subject vehicle, plus all collateral charges, incidental and consequential damages, punitive damages, and all court costs.

COUNT VII
NEGLIGENT MISREPRESENTATION
LIEBMAN v. NISSAN & INFINITI

87. Plaintiff incorporates paragraphs 1- 86 above, as though fully set forth at length herein.

88. At the time of sale, the vehicle was advertised as getting 28/35 miles per gallon, city/highway, with the intention of potential buyers relying upon that representation. See Exhibit "B."

89. Plaintiff relied upon the advertised MPG to purchase the hybrid vehicle.

90. The vehicle now only averages about 18 miles per gallon based upon the most recent "repair" of the vehicle in June 2016.

91. Defendant should have known that the vehicle would not continue to get 28-35 MPG after required repairs.

92. Plaintiff has sustained damages by having a vehicle that does not run, or runs with a much lower MPG.

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